

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LESTER JON RUSTON, # 26834-177,)	
)	
Petitioner/Appellant,)	
)	CIVIL ACTION NO.
VS.)	
)	3:04-CV-2568-G
UNITED STATES OF AMERICA,)	
)	
Respondent/Appellee.)	

ORDER

Considering the record in this case and the recommendation of the magistrate judge, the court **DENIES** petitioner's motion for leave to proceed *in forma pauperis* on appeal. Pursuant to 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a)(3)(A), the court certifies that the appeal is not taken in good faith. In support of this finding, the court adopts and incorporates by reference the September 22, 2010, order denying his motion to vacate judgment. See *Baugh v. Taylor*, 117 F.3d 197, 201-202, n.21 (5th Cir. 1997). Based on the above-referenced order, the court finds that the appeal presents no legal points of arguable merit and is therefore frivolous.

Although the appeal is certified as not taken in good faith under 28 U.S.C. § 1915(a)(3), petitioner may challenge this finding by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of this order. See FED. R. APP. P. 24(a)(5).

Since petitioner is civilly committed, the filing fee provisions of the Prisoner Litigation Reform Act do not apply to this case. See *Ruston v. Dallas County*, No. 07-10206, slip op. at 1 (5th Cir. Dec. 18, 2007) (unpublished per curiam).*

SO ORDERED.

October 15, 2010.



A. JOE FISH
Senior United States District Judge

* The Fifth Circuit recently barred petitioner from filing an original proceeding or notice of appeal in the Fifth Circuit unless he seeks leave. See *In re Ruston*, Nos. 10-10638 and 10-10509 (5th Cir. Oct. 6, 2010).